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G.Q., Appellant)	
)	
and)	Docket No. 16-0048
)	Issued: July 26, 2016
U.S. POSTAL SERVICE, POST OFFICE,)	
Oakland, CA, Employer)	
)	

³ Appellant timely requested oral argument before the Board. By order dated February 19, 2016, the Board, after exercising its discretion, denied her request for oral argument. *Order Denying Request for Oral Argument*, Docket No. 16-0048 (issued February 19, 2016).

ISSUE

The issue is whether OWCP properly refused to reopen appellant's case for further review of the merits because it was untimely filed and failed to demonstrate clear evidence of error.

FACTUAL HISTORY

On October 4, 2012 appellant, then a 46-year-old carrier technician, filed an occupational disease claim (Form CA-2) alleging that she developed right plantar fasciitis as a result of walking her mail route. By decision dated October 18, 2012, OWCP accepted the claim for right plantar fibromatosis.

Medical reports dated April 23, 2012 through March 13, 2013 were submitted from Dr. Joshua Van Gompel, a doctor of podiatric medicine. On April 23, 2012 Dr. Van Gompel evaluated appellant for right heel pain. Appellant reported that she could stand and walk for up to three hours per day at the employing establishment, but experienced severe heel pain for longer durations. Dr. Van Gompel diagnosed chronic right plantar fasciitis. He provided work restrictions of standing and walking for up to three hours per day with the remainder of the shift in a sitting position. On July 12, 2012 appellant underwent a right-sided fasciotomy. In a September 14, 2012 report, Dr. Van Gompel diagnosed 10-week status post right plantar fasciotomy with radiofrequency. He noted that appellant was doing well until she returned to work. Dr. Van Gompel explained that this was a work-related injury and recommended that she perform a sitting position. If such a position was not available, appellant should remain off work. In October 10 and November 14, 2012 reports, Dr. Van Gompel reported that once her workers' compensation claim was processed, he would recommend that she do a sitting only position at work, or be off of work for two to four weeks pending improvement.

In a December 14, 2012 medical report, Dr. Van Gompel reported that appellant continued to experience tenderness to palpation along the plantar aspect of the right heel and the central aspect of the plantar fascia. He noted that she had no pain until she returned back to work and the pain persisted despite her restrictions. Dr. Van Gompel recommended that appellant remain off work for one month and avoid excessive walking.

In a work status report dated December 14, 2012, Dr. Van Gompel advised appellant to remain off work until January 14, 2013 if no modified duty was available. The report noted continued pain and follow-up treatment.

In a January 15, 2013 medical report, Dr. Van Gompel reported that appellant was still having pain without much relief despite being off work for the past month. He recommended that she remain off work for one month and avoid excessive walking. In a January 15, 2013 work status report, Dr. Van Gompel reported that appellant was being treated for her right foot surgery and would be off work until February 18, 2013.

In a January 18, 2013 work status report, Dr. Van Gompel reported that appellant was off work until January 14, 2013 for her right foot condition. He noted the date of the visit as December 14, 2012.

In a March 13, 2013 report, Dr. Van Gompel reported that appellant should remain off work until her next visit. He explained that she did a lot of standing at work which irritated/aggravated her plantar fasciitis. Dr. Van Gompel noted that if appellant continued to improve in six weeks, she would be transitioned back to full duty.

On December 21, 2012 and January 15, and February 14, 2013, appellant filed claims for compensation (Form CA-7) for leave without pay encompassing the period December 17, 2012 through March 14, 2013.

By letter dated March 14, 2013, OWCP informed appellant that the medical evidence of record was insufficient to support her claims for compensation and advised her to submit medical evidence establishing disability for the periods claimed. Appellant was afforded 30 days to submit this additional evidence. She did not respond.

By decision dated April 8, 2013, OWCP denied appellant's claim for wage-loss compensation for the periods December 17, 2012 through January 14, 2013 and January 15 through February 18, 2013. It found that the medical evidence of record failed to establish that she was disabled as a result of her accepted conditions for the specific periods claimed.

On April 30, 2013 OWCP received appellant's April 24, 2013 reconsideration request. Appellant submitted an April 24, 2013 chart note from Dr. Van Gompel in support of her claim.

In the April 24, 2013 report, Dr. Van Gompel reported that appellant was diagnosed with plantar fasciitis, which occurred from pain and inflammation along the plantar fascia. He noted that it was common to have flare ups of plantar fasciitis, and recurrence was also common. Dr. Van Gompel explained that appellant was initially doing very well postsurgery, but subsequently returned to work and the plantar fasciitis worsened with increased inflammation of the plantar fascia while standing and walking. He reported that her plantar fasciitis became so severe that she was taken back off work. Dr. Van Gompel noted that the objective and subjective findings could be found in prior chart notes and identified a January 15, 2013 chart note for reference. He placed appellant on disability because of this work-related flare up explaining that she could not stand or walk for any length of time at work. Dr. Van Gompel concluded that she had excellent improvement after surgery, until she returned to work.

By decision dated May 9, 2013, OWCP denied appellant's claim for wage-loss compensation for the period February 19 through March 13, 2013 finding that the medical evidence of record failed to establish that she was disabled as a result of her accepted conditions for the specific periods claimed.

By decision dated July 29, 2013, OWCP denied modification of its prior decisions, finding that the medical evidence of record failed to establish temporary total disability for the claimed periods due to an objective worsening of appellant's accepted work-related condition.

Beginning January 21, 2014, appellant filed Form CA-7's for leave without pay for the period January 9, 2014 and continuing.

By letter dated April 23, 2014 and received on April 28, 2014, appellant requested reconsideration of the May 9, 2013 OWCP decision.

On August 9, 2013 OWCP received additional reports from Dr. Van Gompel. In an April 24, 2013 report, Dr. Van Gompel reported that appellant should be off work if no modified work was available due to her right plantar fasciitis. In an April 24, 2013 duty status report (Form CA-17), he advised that she could resume work on April 24, 2013 with restrictions including sitting for four hours per day and standing and walking for up to four hours per day. In a July 17, 2013 work status report, Dr. Van Gompel reported that appellant returned to modified work on April 24, 2013 with work limitations of sit and rest as needed and could only deliver mail for four hours per day.

In a December 17, 2013 work status report, Dr. Van Gompel reported that appellant could return to modified duty with restrictions of standing and walking up to four hours per day and no lifting, pushing, or pulling more than 20 pounds.

Dr. Van Gompel reported on January 22, 2014 that appellant could return to modified duty with restrictions of sit and rest as needed and only deliver mail three hours per day.

In a February 12, 2014 narrative, Dr. Van Gompel reported that appellant was diagnosed with plantar fasciitis, which occurred from inflammation along the plantar fascia. He noted that it was common to have flare ups and recurrence of plantar fasciitis. Dr. Van Gompel explained that appellant was initially doing very well after surgery, but subsequently returned to work and the plantar fasciitis worsened. Appellant had increased inflammation of the plantar fascia while standing and walking. Dr. Van Gompel reported that her plantar fasciitis became so severe that she was taken back off work. He noted that the objective and subjective findings could be found in prior chart notes, specifically noting a January 15, 2013 report. Dr. Van Gompel placed appellant on disability because of this work-related flare up and concluded that she could not stand or walk for any length of time at work.

In a March 13, 2014 report, Dr. Van Gompel reported that appellant returned to his office on December 14, 2012 and had no problems regarding her plantar fasciitis. On November 14, 2012 he had given her a work status report indicating that she perform sitting only work. Dr. Van Gompel noted that, in his December 14, 2012 report, appellant informed him that her work position entailed a lot of walking and standing despite his previous work status report, which restricted her to a sitting only position. He noted that her employing establishment did not comply with the work recommendations, thus leading to a reinjury of her plantar fascia. Because appellant's work status recommendations were not being honored, Dr. Van Gompel had no choice, but to take her off of work verse risking further damage to the plantar fascia. With respect to objective findings, Dr. Van Gompel noted tenderness with palpation along the plantar fascia. He explained that this was not a subjective finding because it was based on his physical examination. Dr. Van Gompel's December 14, 2012 report noted these findings, as well as a March 13 and April 24, 2013 report, which showed improvement, but the condition had not resolved. He explained that he placed appellant off of work because her work status limitations were not honored at her place of employment, which caused an objective tenderness to palpation of the plantar fascia to increase on physical examination. Dr. Van Gompel concluded that, had her employing establishment honored the work restriction for a sitting position, she would not have further damaged her plantar fascia.

By decision dated May 9, 2014, OWCP denied modification of the May 9, 2013 decision finding that the medical evidence failed to establish disability for the claimed period causally related to her accepted condition.

In another decision dated May 22, 2014, OWCP denied appellant's claim for wage-loss compensation for the period January 9, 2014 and continuing.

Appellant's June 10, 2014 request for reconsideration of the May 22, 2014 OWCP decision was received by OWCP on June 12, 2014.

A USPS "Employee Everything Report" was submitted documenting processed clock rings for the pay periods January 13, November 1, and December 1, 2014.

In a March 31, 2014 medical report, Dr. Van Gompel reported that appellant had no improvement from pain after her last cortisone injection. He provided findings on physical examination and diagnosed post right plantar fasciotomy with radiofrequency and PRP injection. Dr. Van Gompel noted improvement with work restrictions and advised that appellant could deliver mail for up to three hours per day with the remainder of the time spent in a mixed sitting and standing job.

Appellant requested a review of the written record of the May 22, 2014 decision by a representative of the Branch of Hearings and Review. By decision dated December 10, 2014, an OWCP hearing representative reversed the May 22, 2014 decision, finding that the evidence of record was sufficient to establish entitlement to compensation for disability beginning January 9, 2014 and continuing.

By letter dated May 5, 2015, received by OWCP on May 12, 2015, appellant requested reconsideration of the May 9, 2014 decision. She argued that she was entitled to wage-loss compensation benefits for the period December 2012 to May 2013. Prior to December 2012, appellant reported that she was performing light duty for "sit down" work per her physician's instructions. She argued that her employing establishment knew of her restrictions and ordered her to do collections and deliver certified mail several times a week. As a result, appellant's injury worsened to the point that she could no longer walk, causing her physician to take her off work. She referenced submission of her clock rings, noting code 733 to show that she was out on the street performing collection duty.

In support of her claim, appellant resubmitted Dr. Van Gompel's medical reports dated April 23, 2012 through February 24, 2014 previously of record.

By decision dated May 18, 2015, OWCP denied appellant's reconsideration request as untimely filed and failing to demonstrate clear evidence of error.

LEGAL PRECEDENT

To be entitled to a merit review of OWCP's decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.⁴

⁴ 20 C.F.R. § 10.607(a) (2011).

The Board has found that the imposition of the one-year limitation does not constitute an abuse of the discretionary authority granted OWCP under section 8128(a) of FECA.⁵ Timeliness is determined by the document receipt date of the reconsideration request (the received date in the Integrated Federal Employees Compensation System (iFECS)).⁶ If the request for reconsideration has a document received date greater than one year, the request must be considered untimely.⁷

OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation, if the claimant's application for review demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue decided by OWCP. The evidence must be positive, precise, and explicit and it must manifest on its face that OWCP committed an error.⁸

To demonstrate clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflicting medical opinion or establish a clear procedural error, but must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.⁹

Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error.¹⁰ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹¹ This entails a limited review by OWCP of the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.¹² The Board makes an independent determination as to whether a claimant has submitted clear evidence of error on the part of OWCP.¹³

ANALYSIS

In its May 18, 2015 decision, OWCP denied appellant's May 12, 2015 request for reconsideration of the May 9, 2014 decision, finding that it was untimely filed and failed to demonstrate clear evidence of error. The Board finds that OWCP properly determined that her request for reconsideration was untimely filed.

⁵ 5 U.S.C. § 8128(a); *Leon D. Faidley, Jr.*, 41 ECAB 104, 111 (1989).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4.b (October 2011).

⁷ *Id.*

⁸ 20 C.F.R. § 10.607(b); *Fidel E. Perez*, 48 ECAB 663, 665 (1997).

⁹ *Annie L. Billingsley*, 50 ECAB 210 (1998).

¹⁰ *Jimmy L. Day*, 48 ECAB 652 (1997).

¹¹ *Id.*

¹² *Id.*

¹³ *Cresenciano Martinez*, 51 ECAB 322 (2000); *Thankamma Mathews*, 44 ECAB 765, 770 (1993).

The request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.¹⁴ OWCP issued its merit decision on May 9, 2014. Appellant had one year from May 9, 2014 to submit a timely request for reconsideration. In computing the time for requesting reconsideration, the date of the event from which the designated time period begins to run shall not be included when computing the time period. However, the last day of the period shall be included unless it is a Saturday, a Sunday, or a legal holiday.¹⁵ It is well established that when a time limitation expires on a nonbusiness day, the limitation is extended to include the next business day.¹⁶ One year from May 9, 2014 was May 9, 2015, which fell on a Saturday. Because the time limitation for filing a request for reconsideration fell on Saturday, the time period for filing a request for reconsideration did not expire until the next business day, which was Monday, May 11, 2015.¹⁷ As appellant's reconsideration request was received on May 12, 2015, it was untimely filed.¹⁸ Consequently, appellant must demonstrate clear evidence of error by OWCP in denying her claim.¹⁹

The Board finds that appellant has not demonstrated clear evidence of error on the part of OWCP. In support of her reconsideration request, appellant resubmitted Dr. Van Gompel's medical reports dated April 23, 2012 through February 12, 2014. In resubmitting these documents, she did not explain how this evidence was positive, precise, and explicit in manifesting on its face that OWCP committed an error in denying her claim for compensation. It is not apparent how resubmission of this evidence is sufficient to raise a substantial question as to the correctness of OWCP's decision.²⁰

Appellant argued that her physician recommended a sitting only position for one month, which her employing establishment did not honor. Rather, her employing establishment required her to work outside and deliver collection, Express, and Certified mail. This caused a worsening of appellant's condition and her physician placed her off work from December 17, 2012 through March 14, 2013. Appellant referenced Dr. Van Gompel's November 14, 2012 and February 14, 2013 work status reports in support of her claim.

With respect to the November 14, 2012 work status report, Dr. Van Gompel discussed his restrictions on that date in a subsequent March 13, 2014 narrative report. In the March 13, 2014 report, he explained that, on November 14, 2012, he provided appellant a work status report indicating that she was restricted to sitting only duties at work. Dr. Van Gompel noted that, in his December 14, 2012 report, she informed him that her work position entailed a lot of walking

¹⁴ *Supra* note 4.

¹⁵ *Debra McDavid*, 57 ECAB 149 (2005); *John B. Montoya*, 43 ECAB 1148 (1992).

¹⁶ *See M.H.*, Docket No. 13-1901 (issued January 8, 2014); *Debra McDavid*, 57 ECAB 149, 150 (2005); *Angel M. Lebron, Jr.*, 51 ECAB 488, 490 (2000); *Gary J. Martinez*, 41 ECAB 427, 427-28 (1990).

¹⁷ *P.R.*, Docket No. 14-300 (issued May 12, 2014).

¹⁸ *S.W.*, Docket No. 13-1618 (issued December 12, 2013).

¹⁹ *See Debra McDavid*, *supra* note 16 at 149.

²⁰ *J.J.*, Docket No. 13-1363 (issued November 6, 2013).

and standing despite his previous work status report which restricted her to a sitting only position.

OWCP previously reviewed Dr. Van Gompel's March 13, 2014 report, which discussed appellant's prior work restrictions on or around November 14, 2012. By decision dated May 9, 2014, it determined that she failed to establish wage-loss compensation for the period December 17, 2012 through March 14, 2013. The Board notes that clear evidence of error is intended to represent a difficult standard. Evidence, such as a detailed well-rationalized medical report, which if submitted before the merit denial might require additional development of the claim, is insufficient to demonstrate clear evidence of error.²¹ This evidence, however, is insufficient to establish that OWCP erred in its denial of appellant's claim.²²

Appellant further argued that her employing establishment required her to work outside of her work restrictions causing disability from December 17, 2012 through March 13, 2013 because no modified work was available. She referenced an employing establishment Employee Everything Report noting that code 733 for processed clock rings showed that she was performing collections on the street despite her physician's work restrictions. The Board notes that no evidence was submitted to establish what code 733 meant with respect to appellant's work duties other than her general allegations. Moreover, the Employee Everything Report documented processed clock rings for the pay periods January 13, November 1, and December 1, 2014, not the period at issue, December 17, 2012 through March 13, 2013. Thus, this additional evidence is insufficient to establish that OWCP clearly erred in its denial of appellant's claim.²³

While appellant addressed her disagreement with OWCP's denial of her claim, she failed to demonstrate clear evidence of error. The Board notes that the underlying issue is medical in nature and the record contained no medical evidence to shift the weight of the evidence in her favor and establish that OWCP erred in denying her claim. Appellant did not submit the type of positive, precise, and explicit evidence that manifests on its face that OWCP committed an error.²⁴ Thus, she did not demonstrate clear evidence of error in the denial of her wage-loss compensation claim.²⁵

On appeal, appellant argues that her reconsideration request was received by OWCP in a timely manner as she mailed the request on May 6, 2015 *via* Express Mail. However, there is no evidence of record as of OWCP's May 18, 2015 decision that supports this assertion. As noted, while appellant submitted additional evidence following OWCP's May 18, 2015 decision, the Board cannot review evidence for the first time on appeal.²⁶

²¹ *Supra* note 6 at Chapter 2.1602.3(c) (March 2011).

²² *See W.R.*, Docket No. 09-2336 (issued June 22, 2010).

²³ *Id.*

²⁴ *J.T.*, Docket No. 10-313 (issued February 24, 2010).

²⁵ *B.B.*, Docket No. 08-232 (issued August 7, 2008).

²⁶ *Supra* note 1.

CONCLUSION

The Board finds that OWCP properly refused to reopen appellant's case on the merits as her request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the May 18, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 26, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board